

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Cause No. 4:16-CR-00157-AGF
)
MICHAEL H. LITZ,)
)
Defendant.)

**GOVERNMENT'S OPPOSITION TO DEFENDANT'S ADDITIONAL MOTION TO
EXTEND DATE FOR COMMENCEMENT OF SENTENCE**

COMES NOW, Carrie Costantin, Attorney for the United States Acting Under the Authority Conferred by 28 U.S.C. Section 515, and James E. Crowe, Jr., and Gilbert C. Sison, Assistant United States Attorneys, and files the instant opposition to the Defendant's second motion to extend the date for the commencement of his sentence. In support of said motion, the Government states as follows:

Pursuant to the previous motion to extend the date for the commencement of his sentence, this Court ordered the Defendant to report to his designated Bureau of Prisons ("BOP") facility on July 17, 2018. (Doc. 265). The Government opposed the Defendant's previous motion on the grounds that he could not raise a substantial question of law or fact to justify the delay of his surrender. Specifically, the Government cited to relevant sections of the transcript from the Defendant's change of plea hearing to show that, in fact, he had no credible basis to raise a substantial question of law or fact. Rather, the apparent basis for any post-trial motion to be filed by the Defendant, if any, sounded as if it were one based on a habeas corpus motion for ineffective assistance of counsel.

Now, once again the Defendant seeks an additional extension of his surrender date to the

BOP. This time the basis for the extension is the availability of the plea transcript for the Defendant's change of plea hearing for the purpose of preparing some as yet unidentified post-trial motion. However, the Government has in its possession the plea transcript of which the Defendant refers to in his motion. Moreover, the Government cited to and quoted the aforementioned plea transcript in its Motion to Dismiss the Appeal, which was filed and served on the Defendant on June 29, 2018 and is currently pending before the Eighth Circuit.

Notwithstanding the availability of the aforementioned plea transcript, the Defendant still has not identified what grounds, if any, he has to seek an appeal of his sentence. And, that ultimately is fatal to the Defendant's motion for an extension. The Defendant, in his motion, cites to Section 3143(a) as the basis for the Court to exercise its discretion to delay the Defendant's surrender. The Defendant further focusses on the fact that he is not likely to flee or pose a danger to the community. While true, Section 3143(b), not Section 3143(a) governs the disposition of the instant motion because the Defendant has already filed a notice of appeal. The Defendant filed his notice of appeal on May 24, 2018. (Doc. 242).

Section 3143(b) provides that after an appeal has been filed a defendant must be detained "unless the judicial officer finds – (A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released . . . ; and (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in – (i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process." 18 U.S.C. § 3143(b). In his two motions to date, the Defendant has yet to identify, even in the simplest of terms, the grounds of his appeal to the Eighth Circuit. Without such grounds the Court cannot determine whether, in fact, the Defendant does have an appeal that raises a substantial question

of law or fact that is likely to result in reversal or a reduction of his sentence. Accordingly, the Court should deny the Defendant's motion for failing to make the requisite showing under Section 3143(b).

WHEREFORE, the Government prays that the Court deny the requested extension of the Defendant's surrender date, and for such other and further relief that the Court deems just and proper.

Dated: July 17, 2018.

Respectfully submitted,

CARRIE COSTANTIN

Attorney for the United States Acting Under the Authority Conferred by 28 U.S.C. Section 515

/s/Gilbert C. Sison

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2018, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Mr. Thomas R. Carnes – tcarnes@attystl.com
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s/ Gilbert C. Sison

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